MOTION FILED
AUG 1. 1977

IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1427

REVEREND PAUL A. McDANIEL,

Appellant,

v.

SELMA CASH PATY, a Resident of Hamilton County, Tennessee; SHIRLEY HASSLER, as Coordinator of Elections of the State of Tennessee; LYTEL LANDERS, as Chairman of the State Election Commission of Tennessee; RAY BLANTON, as Governor of the State of Tennessee; BROOKS McLEMORE, as Attorney General of the State of Tennessee; JOE C. CARR, as Secretary of State of Tennessee; JAMES HARPSTER, TOMMY POWELL, RICHARD HOLCOMB, JACK SEATON, as Members of the State Election Commission of Tennessee; CHARLES HINSON, Chairman of the Hamilton County Election Commission; CLAUDE CLARK, TOMMIE CARTER, JAMES PENLEY, ALBERT W. SECOR, as Members of the Hamilton County Election Commission; and TOM MOORE, JR., as Registrar-at-Large for the Hamilton County Election Commission,

Appellees.

On Appeal from the Supreme Court of Tennessee

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF AMERICAN CIVIL LIBERTIES UNION, AMERICAN ETHICAL UNION, AMERICAN JEWISH CONGRESS, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS, BOARD OF CHURCH AND SOCIETY OF THE UNITED METHODIST CHURCH, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA, UNITED CHURCH OF CHRIST, UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, and UNITARIAN UNIVERSALIST ASSOCIATION

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The undersigned, as counsel for Americal Civil Liberties Union, American Ethical Union, American Jewish Congress, Americans United for Separation of Church and State, Baptist Joint Committee on Public Affairs, Board of Church and Society of the United Methodist Church, National Council of Churches of Christ in the United States of America, United Church of Christ, United Presbyterian Church in the United States of America, and Unitarian Universalist Association, respectfully moves this Court for leave to file the accompanying brief *amici curiae* in support of the appellant's claim that a statute which excludes clergymen of any faith from eligibility to serve in public

office violates the Free Exercise Clause of the First Amendment to the Constitution of the United States.

Consent to the filing of the attached brief was sought from the parties. The appellant consented thereto but the appellees withheld their consent.

The interest of the *amici* is set forth in the attached brief. They include organizations which are Christian and Jewish as well as those having no religious affiliation. Their combined membership is probably in excess of sixty-five million Americans. What brings them together in this brief is a deeply-held commitment to the principle of freedom of religious belief and their conviction that disqualification of a person from public office because of his belief or his profession of that belief as a clergyman of a particular faith violates the Free Exercise Clause of the Amendment.

Each of the *amici* is able to address the constitutional issue raised on this appeal and treated in this brief, in the broad context of this country's tradition of religious freedom and each respectfully offers this Court its accumulated experience on that issue. They believe that this experience enables them to make a contribution to the consideration by the Court of this important issue.

Respectfully submitted,

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August 1977

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BRIEF FOR *AMICI CURIAE*

Statement of the Case

The appellant, Reverend Paul A. McDaniel, an ordained clergyman and pastor of the Second Missionary Baptist Church in Chattanooga, Tennessee, filed as a candidate for delegate to the 1977 Constitutional Convention of the State of Tennessee. The appellee, Selma Cash Paty, a candidate for the same office, brought suit against him challenging his eligibility to serve by reason of a statutory disqualification rendering clergymen ineligible to serve as delegates to the convention. The Chancery Court in Tennessee ruled the exclusion of clergymen invalid under the Constitution of the United States, but the Supreme Court of Tennessee reversed and upheld the statute. Thereafter, this Court noted probable jurisdiction of the appeal by Reverend Paul McDaniel.

Interest of the *Amici*

This brief *amici curiae* is submitted by the following organizations:

The American Civil Liberties Union, a nationwide, nonpartisan organization of over 250,000 members, dedicated solely to defending the safeguards of the Bill of Rights.

The American Ethical Union, a national federation of Ethical Culture and Ethical Humanist Societies, dedicated to the concept that the highest value on earth is human worth and to a belief in the democratic process and community.

The American Jewish Congress, a nationa. organization of American Jews, organized to protect the religious, civil, political and economic rights of Jews and to promote the principles of democracy.

Americans United for Separation of Church and State, a national organization of persons of all faiths, organized to foster and protect religious liberty as set forth in the First Amendment of the Constitution of the United States and comparable provisions of the state constitutions.

The Baptist Joint Committee on Public Affairs, a national organization composed of representatives of eight major Baptist denominations and, inter alia, charged with reflecting the historic Baptist concern for religious liberty and the separation of church and state.

The Board of Church and Society of the United Methodist Church, one of four program boards of the Church,

designed to serve as the advocacy arm of the denomination, with reference to social issues and concerns for justice and the health and welfare of all persons in our society.

The National Council of the Churches of Christ in the United States of America, a cooperative agency of thirty national Protestant, Anglican and Eastern Orthodox religious bodies, which have an aggregate membership of over 40 millions persons.

The United Church of Christ, a Protestant religious denomination consisting of approximately six thousand (6,000) local churches having a membership of about one million eight hundred thousand (1,800,000) persons which, as part of its mission, seeks to make the message of the Gospel effective in society, and, therefore, is necessarily concerned with the religious and civil liberties of all persons.

The United Presbyterian Church in the United States of America, a Christian denomination with 8,675 particular churches located throughout the nation in all fifty States, the District of Columbia, and Puerto Rico, including 2,615,662 active members. Organized prior to the Declaration of Independence, this Church has been concerned about the issues of representative government and religious liberty throughout its history.

The Unitarian Universalist Association, an association of churches and fellowships in the United States and Canada, is dedicated to individual freedom of belief and to the principle of the separation of church and state.

All of the participating organizations are committed to the preservation of the dual American democratic values of religious freedom and the separation of church and state. As such they are deeply concerned with a decision sustaining a law that disqualifies a person from public office solely because of his or her religious calling. They believe that such disqualification, expressly forbidden in respect to officials and employees of the national government by Article VI of the Constitution, violates a principle and mandate which should be applicable in respect to every constituent of government in a democratic society.

Constitutional and Statutory Provisions Involved

The First Amendment to the United States Constitution provides in part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

The First section of the Fourteenth Amendment to the United States Constitution provides, in part:

> . . . nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tennessee Constitution, Article IX, Section 1, provides:

> Ineligibility of ministers and priests to seats in legislature.—Whereas Ministers of the Gospel are by their profession, dedicated to God and the care of Souls, and ought not to be diverted from the great duties of their functions; therefore, no Ministers of the Gospel, or priests of any denomination whatever, shall be eligible to a seat in either House of the Legislature.

The provisions of the Tennessee Constitution, Article IX, Section 1, were made applicable as a qualification for election to the 1977 limited constitutional convention of Tennessee by 1976 Tennessee Public Acts, Chapter 848, Section 4, which provides in part:

> Any citizen of the state who can qualify for membership in the House of Representatives of the General Assembly may become a candidate for delegate to the convention upon filing with the County Election Commission of his county a nominating petition containing not less than twenty-five (25) names of legally qualified voters of his or her representative district. . . .

Question to Which This Brief Is Addressed

This brief is addressed to the single question as set forth on page 3 of the Jurisdictional Statement:

> Whether the legislative call for a limited constitutional convention (1976 Tennessee Public Acts, Chapter 848, Section 4) establishing the qualifications of delegates as the same as those for membership in the House of Representatives, thus invoking the Tennessee Constitution (Article IX, Section 1) deprives appellant of the free exercise of religion guaranteed by the First and Fourteenth Amendments of the United States Constitution?

While we limit our consideration to this point, we suggest that the exclusion of clergymen from the constitutional convention also violates the Establishment Clause of the First Amendment. It violates that clause because it mani-

fests non-neutrality in respect to religion, forces or influences a person to remain away from church in his capacity of minister, and has a primary effect which inhibits religion. *Everson* v. *Board of Education*, 330 U.S. 1, 15-16 (1947); *McCollum* v. *Board of Education*, 333 U.S. 203, 210 (1948); *McGowan* v. *Maryland*, 366 U.S. 420, 443 (1961); *Torcaso* v. *Watkins*, 367 U.S. 488, 492-493 (1961); *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971); *Meek* v. *Pittenger*, 421 U.S. 349, 358 (1975).

We suggest too that the challenged statute violates the Equal Protection Clause of the Fourteenth Amendment and might also bring into play the provision in Article VI imposing upon the United States, including this Court, the obligation to "guarantee to every state in the Union a republican form of government."

Summary of Argument

Although the language of Article VI of the Federal Constitution, which states that "no religious test shall ever be required as a qualification to any office or public trust under the United States," is apparently limited in its application to federal offices, the requirement of such a qualification undoubtedly violates the provision in the First Amendment against prohibiting the free exercise of religion. The statute challenged herein violates the Free Exercise Clause because it imposes the penalty of disqualification from public office upon those whose religious conscience impels them to serve as ministers of their faith. The full applicability of the Free Exercise Clause to the states by reason of the Fourteenth Amendment is no longer open to question.

While the prohibition of the Religion Clause of the First Amendment is not absolute, the burden is upon the State of Tennessee to establish the presence of a compelling interest that justifies infringing upon the citizen's right to the free exercise of his religion. The State of Tennessee has not presented—nor can it present—any interest sufficiently compelling to justify impairment by a religious test for political office.

ARGUMENT

POINT ONE

The historic background of religious tests for public office and of the Free Exercise Clause of the First Amendment establishes the intent of the Framers of the Amendment to incorporate therein the ban upon religious tests.

A. Introductory Statement

Initially we note that the explicit provision in Article VI of the Constitution that "no religious test shall ever be required as a qualification to any office or public trust under the United States" does not mandate a holding that the prohibition excluded religious tests from the ambit of the First Amendment's ban on laws respecting an establishment of religion or prohibiting its free exercise. In the first place, the prohibitions of the First Amendment go far beyond religious tests for public office. They include, for example, laws appropriating tax-raised funds for the support of religious schools, laws excluding Sabbatarians from the benefits of unemployment compensation programs by reason of their refusal to accept employment requiring them

to violate their Sabbath, and laws penalizing parents for refusing because of their religious conscience to send their children to public schools so long as they receive an equivalent education in nonpublic schools including church-related schools. *Meek* v. *Pittenger*, 421 U.S. 349 (1975); *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).

Secondly, the ban on religious tests for public office is not the only instance in which a right explicitly protected in the Constitution may also be protected in the Bill of Rights. The guaranty of jury trial in criminal cases, for example, is secured in Article III of the Constitution and again in the Sixth Amendment.

It follows from this that no inference of intended exclusion from the First Amendment can be drawn from the fact that the Amendment does not expressly refer to religious tests for public office. On the contrary, the history of such tests and the response to it by those who wrote our Constitution and Bill of Rights leaves no doubt they deemed them to be violative of both the Free Exercise and Establishment provisions of the First Amendment. It also follows from this that the incorporation of both aspects of the First Amendment—the Free Exercise and Establishment Clauses—into the Fourteenth, mandates the same judicial scrutiny and the application of the same constitutional tests as would be called for if it were an act of Congress rather than a state statute that would be before this Court.

B. The History of Religious Tests for Public Office

During the colonial era, before the onset of disestablishment of religion and the separation of church and state,

clergymen were prominent in government. In theocratic New England, clergymen were often more than in government—they were the government. It was therefore almost inevitable that the advance of separation should bring with it a movement to exclude clergymen from political office. As early as 1778 a resolution was offered in the Continental Congress "that the sense of the house be taken, whether it is proper that Congress should appoint any person of an ecclesiastical character to any civil office under the United States." The Continental Congress, dominated as it was by clergymen and preoccupied with religion, took no action on the motion.[1]

A different situation prevailed in the states. At the time the Constitution was adopted, seven states had constitutional provisions barring clergymen from serving in the legislature[2] or, in some cases, from holding any political office.[3] By the end of a half century after independence the number had increased to thirteen.[4] North Carolina, in its constitution of 1776, was the first state to adopt a bar against the election of a clergymen to the legislature, but the New York constitution of the following year contained a broader exclusionary provision, adopted purportedly for the benefit of the clergymen themselves. Article 31 provided:

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1. E. F. Humphrey, Nationalism and Religion in America (1924) p. 408.

2. The states were Maryland, Virginia, North Carolina, and Georgia. L. Pfeffer, Church, State, and Freedom (Rev. ed., 1967) p. 118.

3. The states were New York, Delaware and South Carolina. *Ibid.*

4. A. P. Stokes, Church and State in the United States (1950), Vol. 1, p. 622.

> And whereas the ministers of the gospel are by their profession, dedicated to the service of God and the care of souls, and ought not to be delivered from the great duties of their function; therefore, no minister of the gospel or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or deception whatever, be eligible to or capable of holding any civil or military office or place within this State.[5]

In the draft of a constitution for Virginia that Thomas Jefferson prepared in 1778, he included a provision barring ministers of the Gospel from holding political office, because he believed that such an exclusion was required by the principle of separation of church and state. James Madison, on the other hand, felt that the same principle prohibited such an exclusion. Commenting on Jefferson's proposal, he said:

> Does not the exclusion of ministers of the Gospel as such violate a fundamental principle of liberty by punishing a religious profession with the deprivation of a civil right? Does it not violate another article of the plan itself which exempts religion from the cognizance of Civil power? Does it not violate justice by at once taking away a right and prohibiting a compensation for it? Does it not in fine violate impartiality by shutting the door against Ministers of one Religion and leaving it open for those of every other?[6]

It was Madison, rather than Jefferson, whose position was vindicated in time. Jefferson himself came around to

5. F. N. Thorpe, Federal and State Constitutions, Colonial Charters and Other Organic Laws (1909), Vol. V, p. 2637.

6. Writings of James Madison, ed. G. Hunt (1900-1909), Vol. V, p. 288.

Madison's view, giving up his opposition to civil office for clergymen, and asserting no opposition to the inclusion of the ban on religious tests in the Constitution.[7]

The history of religious tests for public office in the states also vindicated Madison's position. By the end of the first quarter of the 19th century the number of states whose constitutions barred clergymen from holding political office increased to thirteen.[8] Thereafter, however, no further state constitutions included the prohibition and, with the exception of Maryland and Tennessee, all the states which did have the prohibition eliminated it either by constitutional amendment or by adoption of a new constitution which did not include it. As noted in the opinion of the court below (Jurisdictional Statement, p. 7-8), the Maryland prohibition was adjudged unconstitutional in *Kirkley v. State of Maryland*, 381 F. Supp. 327 (1974), and the state elected not to appeal the decision. Today, only Tennessee retains the exclusion of clergymen from political office.

The explanation for this historic development is fairly obvious. The original state constitutions and those adopted up to the end of the first quarter of the nineteenth century reflected the strong wave of anti-clericalism which was spawned by the French Revolution and exerted considerable influence in this country. Time proved that the experience of 18th century France and the fears of clericalism which it engendered were unrealistic in our society and that the exclusion of a particular profession from eligibility to serve in political office could not be reconciled with our commitment to governments by, of and for all the people.

7. A. P. Stokes, *supra*, footnote 4, Vol. 1, p. 624.

8. L. Pfeffer, *supra*, footnote 2, p. 222.

POINT TWO

Religious tests for public office violate the Free Exercise Clause of the First Amendment made applicable to the states by the Fourteenth.

A. Introductory Statement

It is, of course, no longer open to question that both the Free Exercise and the Establishment Clauses of the First Amendment are applicable to the states through the Fourteenth. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Everson* v. *Board of Education,* 330 U.S. 1 (1947). Moreover, what is incorporated into the Fourteenth Amendment is not merely the bare text of the First but its judicial interpretation as well (and *vice versa*). It follows from this that if, as we believe, the Free Exercise Clause encompasses a ban on religious tests for public office that ban is applicable to the states by virtue of the Fourteenth Amendment.

B. Free Exercise and Religious Tests

It has often been noted that the history of the struggles for the free exercise as well as disestablishment of religion in the states and particularly in Virginia, before the adoption of the national constitution and its bill of rights, is of significant importance in construing the meaning and intent of the First Amendment. (The Court's opinion in *Everson* and Justice Rutledge's dissenting opinion in that case are obvious examples.) This history indicates clearly that the Free Exercise guaranty of the First Amendment was intended to encompass a prohibition of religious tests for public office.

But one year before our Constitution was adopted and only three years before the First Amendment was presented to Congress for its approval, Virginia enacted its monumental Act for Establishing Religious Freedom. That statute, drafted by Jefferson and enacted by the legislature under Madison's leadership, provided in part as follows:

> That our civil rights have no dependence on our religious opinions, any more than on our opinions in physics or geometry; that therefore the proscribing of any citizen as unworthy of public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow citizens he has a natural right; that it tends only to corrupt the principle of that religion it is meant to encourage by bribing with a monopoly of wordly honors and emoluments, those who will externally profess and conform to it.
>
> The operative section of the act provided that . . . no man . . . shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, *and that the same shall in no wise diminish, enlarge or affect their civil capacities.* (Emphasis added.)

It need hardly be added that the fact that the individual may receive monetary compensation for the expression of his opinions in religious matters or earn a livelihood thereby does not make less the mandate that his civil capacities shall not be affected thereby. *Follett* v. *Town of McCormick,* 321 U.S. 573 (1944); *Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943).

The decisions of this Court have consistently applied the spirit of the Virginia statute in its decisions on the free exercise of religion. In earlier cases, it applied to challenges under the Free Exercise Clause the same test applicable to the Free Speech Clause: that is, the clear and present danger test. In applying this test the Court recognized "the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945); *Marsh* v. *Alabama,* 326 U.S. 501, 509 (1946); *Prince* v. *Massachusetts,* 321 U.S. 158 at 164 (1944). Hence, "any attempt to restrict these liberties," the Court held, "must be justified by clear public interest threatened not doubtfully or remotely, but by clear and present danger." *Thomas* v. *Collins,* 323 U.S. at 530. See also *West Virginia State Board of Education* v. *Barnette,* 319 U.S. 624, 639 (1943).

Applying this test, the Court held violative of the Free Exercise Clause a New York statute which declared that the Russian Church in America rather than the representative of the Moscow Patriarchate was the true Russian Orthodox Church and therefore entitled to obtain possession of the Russian Orthodox Church property in the state. *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94 (1952).

Most pertinent and cogent is the Court's unanimous decision in *Torcaso* v. *Watkins,* 367 U.S. 488 (1961), holding unconstitutional as an abridgement of freedom of religion a provision in the Maryland constitution requiring of all state officials, including notaries public, an oath or declaration that they believed in the existence of God. In

the present case, the Supreme Court of Tennessee sought to distinguish *Torcaso* as follows:

> . . . The [United States Supreme] Court said that the test oath is abhorent to our tradition and that neither a state nor the Federal Government can constitutionally force a person "to profess a belief or disbelief in any religion." In our opinion, Article IX, Section I does not have the effect of forcing ministers and priests to profess a belief or disbelief in any religion. The test oath clearly intruded upon the freedom to believe or to disbelieve, and no state interest to justify its imposition was, or could be asserted.

We are unable to see how the provision challenged in the present case intrudes less clearly upon freedom to profess a belief in religion than the exclusion from public office in *Torcaso.* It can hardly be argued that freedom to believe does not encompass freedom to profess or practice that belief even, as we have shown, as an aspect of one's livelihood. Nor, as we will seek to establish below, can we see any state interest justifying imposition of such a religious test for public office.

Beginning with *Sherbert* v. *Verner,* 374 U.S. 398 (1963), the Court in First Amendment cases has spoken in terms of compelling interest. Like the clear-and-present danger test, the compelling-interest test is based on the premise that the liberties protected by the First Amendment are fundamental in our constitutional democracy and therefore stand in a preferred position in our scale of values. Hence, as the Court said in *Sherbert* (at 406), "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, only the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

The trend of the Court's decisions in applying the compelling interest test has been toward an ever broader interpretation and application of the Free Exercise Clause. Thus, in *Sherbert,* the Court held that a denial of unemployment benefits because of a woman's refusal to accept a position that required her to work on Saturday, violated the Free Exercise Clause. In the case of *In re Jenison,* 375 U.S. 14 (1963), it held that a woman whose conscience forbade her from serving on juries because it would violate the Biblical command, "Judge not that ye be not judged," could not, consistent with the Free Exercise Clause, be held in contempt of court. And in *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972), the Court held that the Free Exercise Clause forbade prosecution under a state's compulsory school attendance law of Amish parents whose religious conscience would not allow them to send their children to secondary schools.

In sum, under the present interpretation of the Free Exercise Clause, government, state or federal, can restrict the expression or exercise of religion only by showing: (1) that there is a counter governmental interest of such importance as to be deemed compelling; and (2) that there is no alternative for its protection other than the limitation on the free exercise of religion.

C. Present Danger and Counter-Governmental Interest

Measured by either standard we submit that the challenged Tennessee statute cannot survive judicial scrutiny. What clear and present danger to any valid public interest is prevented by the statute? What compelling counter-governmental interest exists which cannot be protected ex-

cept by disqualifying clergymen from serving as delegates to the state's constitutional convention? None is presented in the opinion of the Tennessee Supreme Court nor can we think of any independently.

It cannot be the anti-clericalism that motivated these exclusionary statutes when they were initially adopted. Even if this feeling towards clergymen still exists in Tennessee, which is highly doubtful, it certainly does not justify the deprivation of so important a constitutional right as to serve in the legislature or in a constitutional convention. It cannot be the fear that, if clergymen are allowed to act as legislators or members of a constitutional convention, they will subvert their secular duties to their religious obligations. Under Article VI of the Federal Constitution they are bound by oath or affirmation to support that Constitution and, until the contrary is proved, it cannot be assumed that they will violate their oath or affirmation. Even if it is conceded that their religious beliefs may influence their votes on particular provisions of a proposed constitution, the same is no less true of all the citizens of Tennessee who have the last word and will ultimately be called upon to accept or reject the constitution proposed by the convention. Should not then all citizens having strong feelings in respect to religion, from pietist to atheist, be disqualified, leaving the franchise to those, if there are any, who are completely neutral in respect to religion? This conclusion may be absurd, but it is the only one that can validly sustain the constitutionality of the challenged law.

Justification of the challenged statute under either the clear and present danger or the compelling counter-governmental interest test is, we suggest, practically impossible

in view of the fact that only a minority of states ever enacted and only Tennessee still maintains a religious test for public office. The history of these tests, including the barrier in Article VI of the national constitution, their elimination by repeal or abandonment in those states which still had them in the post-1787 decades and the refusal of all the other states to adopt them bears strong evidence that they cannot survive scrutiny under either the clear-and-present-danger test or the compelling government interest standard.

In *Wisconsin* v. *Yoder*, this Court said:

> The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. 406 U.S. at 215.

Adherence to that principle, we submit, requires invalidation by this Court of the challenged Tennessee statute.

Conclusion

For the reasons set forth, the judgment appealed from should be reversed and the challenged statute be declared unconstitutional.

Respectfully submitted,

/s/ Leo Pfeffer

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